

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

August 7, 2008

A meeting of the Board of Environmental Protection was held on Thursday, August 7, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Ernest W. Hilton, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Sue Lessard, Matt Scott, Lissa Widoff and Nancy Ziegler

Absent: P. Andrews Nixon

<u>Staff:</u>	Bureau of Land and Water Quality	Richard Baker
	Bureau of Land and Water Quality	Beth Callahan
	Bureau of Land and Water Quality	James Cassida
	Bureau of Land and Water Quality	Hetty Richardson
	Bureau of Land and Water Quality	Susan Davies

Others: David P. Littell, Commissioner
Pete LaFond, Assistant Attorney General
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 3:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner Littell reported the following:

Milfoil: The Department (DEP) in partnership with the Dept. of Inland Fisheries and Wildlife (IF&W) is working to address a recently discovered infestation of Eurasian milfoil. The milfoil was discovered on Salmon Lake by a volunteer lake monitoring member for the Belgrade Lakes Region. This plant is the most highly invasive of all the milfoil plants and because it was found at the IFW boat launch near the pond outlet it represents a significant threat to the Belgrade Lakes system. The Department responded in accordance with the rapid response manual that was developed by both DEP and IF&W. Response actions included a 45-day surface use restriction at the boat launch, in part, to limit the spread of the plant and to allow for the DEP and contracted divers to work on plant removal. The restriction allows for boat access to individuals working on plant removal and property owners for access to homes or camps provided no interference with removal activities occur.

Board member Hilton asked how long the plant has been in the lake.

Commissioner explained that although it is not possible to give an estimate on the duration of time that the plant has been in the lake, the Department is encouraged by the fact that the infestation is small and isolated which should help ensure the success of response actions taken to control the plant.

DEP Kudos: The commander of the state's Drug Enforcement Office sent a letter of praise regarding the work of DEP's response staff for their action and clean-up efforts at the site of a meth lab. The DEP provides for the safe removal and disposal of the chemicals associated with these types of sites.

Board member Ernest Hilton asked about the frequency of these response situations.

Commissioner Littell indicated that the Department has responded to five (5) meth lab sites. The Commissioner noted that the DEP's clean-up efforts do not extend to the removal of carpets, walls and other building components that are frequently contaminated with chemicals, but only to the chemicals themselves.

Appointments: Governor Baldacci has made several appointments. The Board of Corrections will welcome former BEP member Irv Faunce. Three persons have been named as trustees for the Energy and Carbon Savings Trust to administer the Regional Greenhouse Gas Initiative (RGGI) auction funds : (1) Steve Diamond, (former PUC Commissioner), (2) Tom Titenberg, (former Colby professor and expert in emissions trading systems), and (3) current BEP member P. Andrews Nixon (strong background on energy issues).

BEP Jurisdiction: The Department received a request from five sets of individuals [Geoff & Diane Sprague, Rodney & Marcia Boynton, Jerry Topinka, Barbara Spillane and Ernest LaFrance] asking for Board jurisdiction concerning an application for Site Location of Development Law, NRPA and Tier 1 review. The application is for improvements to an existing resort in Boothbay which includes the demolition of existing structures and construction of new facilities. The new construction includes: (a) 40-room lodge; (b) 34 cottages; (c) waterfront restaurant; and (d) pier / float system. The project would alter 8,405 sq. ft. of freshwater wetland for the development of an additional 3.7 acres of impervious area (total impervious area of the project is 6 acres). According to the Department's review, this request did not meet the criteria for BEP jurisdiction.

Board member Ernest Hilton indicated that he was interested in the development project to be sited in the Schoodic area.

The Commissioner indicated that an application for that project has not been filed with the Department.

The Commissioner noted for the Board that he will be departing at approximately 10:00 a.m. to conduct interviews for the new climate change program manager position. Recently imposed hiring guidelines made it necessary to schedule interviews for today.

July 3, 2008 BEP Comments: Commissioner Littell explained that Mike Barden of the Maine Pulp & Paper Association sent an email noting the need for clarification concerning the Commissioner's response to Board member Widoff's question about dioxin monitoring. The following clarification was offered:

The cap for the dioxin monitoring test program remained at \$250,000.00 as opposed to the earlier reported \$25,000.00. With the submittal of all reporting data sets, the DEP has confirmed that all the mills have met the "above and below test" as opposed to the earlier report that one mill had failed.

B. COMMENTS FROM THE BEP CHAIR: NONE

C. EXECUTIVE ANALYST COMMENTS: None

D. BOARD CALENDAR:

Reviewed. Staffnoted a possible change to the VERSO site visit scheduled for August 21, 2008 resulting from a need to consider the merits of an appeal of the stormwater permit for the Beaver Ridge Wind power project in Freedom. It was decided to move forward with the VERSO site visit in the afternoon, and convene the Board at 8 am on August 21st to accommodate the appeal.

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:

Board member Elizabeth Ehrenfeld requested follow up on three permit decisions contained in the report "Department Orders Filed with the Board": (1) Gas to energy plant in Norridgewock, (2) Katahdin Paper's use of vegetable oil, and (3) Mere Point boat launch update.

Commissioner Littell explained that the Board Order concerning the IFW boat launch at Mere Point required the replacement of moorings prior to the facility being opened. While many of the moorings were owned by the Town, a few are owned by opponents to the boat launch project. DEP staff is working to resolve this issue with the Town and IFW, including the town's ability to enforce this provision of the permit through the memorandum of agreement.

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

1. BEP Minutes July 3, 2008 – approval

Board voted (8-0-1-1) on a motion to approve consent agenda item 1, with the addition of a note to clarify the Commissioner's reply to Board member Widoff concerning the dioxin monitoring cap and mill monitoring results, and with changes to the record of vote in Consent Agenda Items 1 and 6 and Regular Agenda item 2. The correction is to the sequence of listing of the votes to abstain and oppose:

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Matt Scott, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Sue Lessard abstained. Board member P. Andrews Nixon was absent.

2. DENNIS SULLIVAN and DONNA SULLIVAN, Harrison – Administrative Consent Agreement (BLWQ – Land)

3. CHARLES CRAIG, Etna – Administrative Consent Agreement (BLWQ – Land)

4. KENNETH PENNEY and LINDA PENNEY, Sidney – Administrative Consent Agreement (BLWQ – Land)

Board voted (9-0-0-1) on a motion to approve consent agenda items 2, 3, and 4 as presented:

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Matt Scott, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member P. Andrews Nixon was absent.

III. Regular Agenda

1. CHAPTER 1292, MUNICIPALITY OF CARTHAGE // STATE-IMPOSED SHORELAND ZONING ORDINANCE - AMENDMENT (adoption)

Staff: Richard Baker, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to adopt Chapter 1292, Municipality of Carthage amendments to their State-imposed Shoreland Zoning Ordinance that rezones land surrounding Podunk Pond to a Limited Residential District with a correction to the spelling of "Residential" on page 2. The area of the proposed amendment is currently zoned as a Resource Protection District. The Board voted pursuant to 38 M.R.S. Sections 341-D(1-B) and 438-A(4), and 06-096 Chapter 1000.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion. Board member P. Andrews Nixon was absent.

2. HARRY & SUSAN SCHMITKE – DEPARTMENT ORDER L-24141-TA-A-N / DRIVEWAY CONSTRUCTION -- (appeal by Dorothy Meriwether)

Staff: Beth Callahan, Bureau of Land and Water Quality

Staff: James Cassida, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to deny the appeal submitted by Dorothy Meriwether and affirm the Commissioner's Order L-24141-TA-A-N which approved alteration of 1,090 sq. feet of freshwater wetland to construct a 10 foot wide by 132 foot long driveway in South Thomaston. The vote was taken pursuant to 38 M.R.S. Sections 341-D(4), and 480-A through 480-FF, and 06-096 Chapters 2 and 310.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion. Board member P. Andrews Nixon was absent.

BOARD RECONVENED AT APPROXIMATELY 1:30 P.M. TO CONSIDER REMAINDER OF AGENDA

3. CHAPTER 342, SIGNIFICANT GROUNDWATER WELLS / NEW (post to 30-day written public comment)

Staff: Hetty Richardson, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to post to 30-day written comment new Chapter 342, Significant Groundwater Wells. This rule requires a public information meeting prior to submittal of an application and requires a pre-application meeting (unless this provision is waived by the Department). It also establishes a funding structure to hire third party environmental professionals to provide technical review of proposals. The Board anticipates a September 18, 2008 deadline for comments. The Board voted pursuant to 38 M.R.S.A. Section 341-D(1-B), and Public Law 2007, chapter 399.

Board members Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Sue Lessard, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion. Board member P. Andrews Nixon was absent.

4. 2008 PROPOSED WATER QUALITY RECLASSIFICATION FOR CERTAIN MAINE WATERS (briefing and post to public hearing)

Staff: Susan Davies, Bureau of Land and Water Quality

The Board did not vote on this matter, but received an information briefing from staff concerning the draft 2008 Proposed Water Quality Reclassification for Certain Maine Waters. The Board will consider posting this proposal at its regular meeting on Thursday, August 21, 2008. The proposed reclassifications are intended to achieve the purposes of the law including: to promote the general welfare; prevent disease; promote health; provide fish, shellfish and wildlife habitat; provide recreational opportunity; and provide resources for commerce and industry by means of a balanced distribution of water classes statewide.

Informational Session

- In-Lieu Fee

The Board received information concerning types of projects (e.g. size, scope, location etc.) where a mitigation compensation package is necessary.

It was explained that the In-Lieu Fee option is an additional tool a developer can utilize to lessen the negative environmental impacts of a project. The Nature Conservancy is responsible for management of the funds for disbursement in the form of grants to qualifying conservation efforts.

- ~~Significant Wildlife Habitat Review Guidance: The informational session on Significant Wildlife Habitat was postponed to a future meeting.~~

Next Regular Meeting –Thursday, August 21, 2008 – **8:00 a.m.** Holiday Inn / Ground Round